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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

No. 560

BOARD OF SATANTA JOINT RURAL HIGH SCHOOL DISTRICT No. 2, WILLIAM H. HELTON and ELWIN ANTHONY, Individually and As Members of Said Board,
Appellants,

vs.

THE HASKELL COUNTY PLANNING BOARD and the Members Thereof, HAROLD LOWER, RUSSELL WINTERS, WESLEY LUCAS, CHARLES McDONALD, ELWIN ANTHONY and JOE STARKE, and ADEL THROCKMORTON, State Superintendent of Public Instruction,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF KANSAS.

MOTION TO DISMISS

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MOTION TO DISMISS

Appellees move to dismiss on the grounds that the federal question sought to be reviewed was not timely raised or expressly passed on below and that the question presented is so unsubstantial as not to need further argument.

QUESTION PRESENTED

Where a state legislature, consistently with state constitutional provisions, delegates to a state official the final responsibility for fixing school district boundaries, does a provision that an election within a particular area as to which district it should be attached shall be advisory only deny electors in that area due process of law?

STATEMENT

As indicated by the Jurisdictional Statement, this case is identical to *Board of Satanta Joint Rural High School District No. 2 et al.* v. *Grant County Planning Board et al.*, No. 192, October Term, 1966, appeal dismissed ..... U.S. ....., October 10, 1966. The plaintiffs are the same, the question presented is the same, and the territory in dispute is the same. In both cases the gist of the action is the appellant school board's dissatisfaction with the refusal of the Kansas state superintendent of public instruction to transfer certain territory in Grant County to Haskell County for school boundary planning purposes.

The only difference is that this case originated in the District Court of Haskell County, Kansas, and the Haskell County planning board was named as defendant, along with the state superintendent, whereas the earlier case originated in the neighboring county of Grant and named the Grant County planning board as the superintendent's co-defendant.

In short, this case is nothing more than an attempt by a defeated litigant to retry his cause in another forum. The trial court recognized it as such by granting summary judgment, and the Kansas Supreme Court summarily disposed of the appeal in an almost unprecedented one page opinion (Jurisdictional Statement, Appendix A).

ARGUMENT

Despite appellants' allegations in the jurisdictional statement, an examination of their pleadings in the trial court reveals no single mention of the United States Constitution. The court below disposed of the appeal by incorporating by reference its opinion in the previous case, *Board of Satanta* v. *Grant County Planning Board,* 195 Kan. 640, 408 P.2d 655 (1965). No federal question was decided in either case.

The one posed, as was pointed out in the *Motion to Dismiss* filed in this Court in the Grant County case (No. 192, supra), is so insubstantial as to require no argument. Appellees refer the Court to and rely on that Motion.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this appeal should be dismissed.

Respectfully submitted,

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